IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

Bail Appl..No. 7153 of 2007(S)

[CRIME NO.1141/2007 OF TIRUR POLICE STATION]

: PETITIONER/ACCUSED:

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1. SHAMEER, AGED 22 YEARS,
S/O. AVARAN, R/AT THALIKKAM PARAMBIL HOUSE,
VETTAM PALLIPPURAM, CHERIYA VATTALOOR,
TIRUR TALUK, MALAPPURAM.

2. KABEER, AGED 25 YEARS,
S/O. RAYINKUTTY, CHEMTHIRUTHY HOUSE,
VETTAM PALLIPPURAM, CHERIYA VATTALOOR,
TIRUR TALUK, MALAPPURAM.

BY ADV. SRI.C.V.MANUVILSAN
SRI.P.K.KHALEEMUDHEEN
SRI.P.C.ANILKUMAR
SRI.DARSAN SOMANATH

RESPONDENTS: COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY S.I. OF POLICE,
MUHAMMA POLICE STATION, ALAPPUZHA.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 28/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.7153 of 2007

Dated this the 28th day of November 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 4 and 2 respectively. Altogether there are five accused persons arrayed by now, submits the learned Public Prosecutor. The crux of the allegations as revealed in the investigation by now is that river sand was being illicitly unloaded. When a Village Officer, passing by, observed such illicit unloading of river sand, he informed the Tahsildar. The Tahsildar, in turn, directed him to take necessary action. He wanted the lorry to be taken to the police station. The lorry driver along with another was allegedly present. When the de facto complainant reached the lorry, the lorry driver spoke to someone over the telephone. Thereafter, the three accused persons came to the scene of the crime. The de facto complainant detained the lorry driver. Later the de facto complainant was assaulted and he was got released. On the next day, the Village Officer lodged a complaint. Crime has been registered. Investigation is in progress.

2. The learned counsel for the petitioners submits that the allegations raised are totally false. The de facto complainant

had no role to play at all in the detection of any offence under the River Sand Act. Absolutely false allegations are being invented to vex and harass the petitioners. In these circumstances, the petitioners may be granted anticipatory bail, it is prayed.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the materials collected so far point to the complicity of the petitioners. There is no reason whatsoever to doubt or suspect the version of the complainant now. In these circumstances, the petitioners may not be granted anticipatory bail. They may be directed to surrender before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal course.

4. I have considered all the relevant inputs. At the early stage of investigation, I shall scrupulously avoid any detailed discussion on merits about the acceptability of the allegations raised or the credibility of the data collected. Suffice it to say that I am satisfied that there are no features in this case which would justify invocation of the extraordinary equitable discretion

under Section 438 Cr.P.C. This, I agree with the learned Public Prosecutor, is a fit case where the petitioners must appear before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course.

5. In the result, this petition is dismissed. Needless to say, if the petitioners surrender before the investigating officer or the learned Magistrate and apply for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007